

REMARKS

This paper and the accompanying Request for Continued Examination (RCE) are being submitted in response to the Final Office Action dated February 23, 2007 (the "Final Office Action").

Claims 1-117 and 119 were previously pending in the application. Claims 1, 3, 57, and 113 have been amended. New claims 120-124 have been added in this paper and no claims have been cancelled in this paper. Accordingly, claims 1-117 and 119-124 are now pending.

Claims 1-7, 14, 16, 17, 29-35, 42, 44, 45, 57-63, 70, 72, 73, 85-91, 98, 100, 101, 114-117 and 119 stand rejected.

Claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99 and 102-112 are under objection.

Claim 113 has been allowed.

Allowable Subject Matter

Applicant expresses continued gratitude for the indication that independent claim 113 is allowed, and that dependent claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99 and 102-112 would be allowable if rewritten in independent form including all of the limitations of the respective base claims and any intervening claims. Applicant wishes to maintain the dependent claims in dependent form in view of the following remarks on the allowability of the corresponding base claims.

Formal Matters

On p. 3, the Final Office Action refers to “paragraph [0049], lines 5-10” of *Bentall*. Applicant does not find this portion within the *Bentall* reference, which does not include paragraph numbers. Applicant respectfully requests a clarification of the citation.

Rejection of Claims under 35 U.S.C. § 103

Claims 1-3, 29-31, 57-59, 85-87, 114-117 and 119 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,282,170 issued to Bentall, et al., (“*Bentall*”) in view of U.S. Patent Publication No. 2002/0118636 by Phelps, et al., (“*Phelps*”).

Claims 4-7, 14, 16, 32-35, 42, 44, 60-63, 70, 72, 88-91, 98 and 100 stand rejected under § 103(a) as being unpatentable over *Bentall* in view of *Phelps*, and further in view of U.S. Patent No. 6,728,205 issued to Finn, et al., (“*Finn*”).

Claims 17, 45, 73 and 101 stand rejected under § 103(a) as being unpatentable over *Bentall* and *Phelps* in *Finn* and further in view of U.S. Patent No. 6,430,150 issued to Azuma, et al., (“*Azuma*”).

Applicants respectfully submit that the claims are allowable under § 103(a) because a person having ordinary skill in the art would not make the proposed combination of references, and because the cited portions of the references fail to disclose each limitation of Applicant’s claims.

For example, the rejection of Applicant’s claim 1 relies on a combination of *Bentall* with *Phelps*. As a motivation for this combination, the Final Office Action suggests that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of *Bentall* to implement the process of checking capacity of link at each computing node by transmitting request message so that spare transport capacity in communication links is allocated dynamically without dedicating spare transport capacity to a specific failure condition.

(Final Office Action at 3.)

Applicant respectfully disagrees with this conclusion. It is not clear how checking capacity of links at each computing node would dynamically allocate spare transport capacity. It is further unclear how such checking of capacity would allow capacity to be allocated “without dedicating spare transport capacity to a specific failure condition.” Still further, it is not clear how a person having ordinary skill in the art would use this motivation to make a combination of *Phelps* and *Bentall* in such a way as to achieve a system in which “spare transport capacity in communication links is allocated dynamically.” In addition, Applicant does not find any teaching in the references by which transport capacity is “allocated dynamically.” Applicant respectfully submits that the proposed motivation for the combination of references is not found in the cited references and would not be known to a person having ordinary skill in the art. Applicant submits that for these reasons a person having ordinary skill in the art would not make the proposed combination of *Bentall* and *Phelps*. At least for this reason, independent claim 1 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, independent claims 29, 57, and 85 and all claims dependent therefrom are also allowable under § 103(a).

As another example, independent claim 1 as amended includes **receiving information from a candidate node; the information indicates that the candidate node has sufficient resources to support a virtual path.** This limitation is not disclosed in the cited portions of the

references. At least for this reason as well, claim 1 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, independent claim 57 and all claims dependent therefrom are also allowable under § 103(a).

As another example, dependent claim 3 requires that **the candidate node is configured to determine whether the candidate node has sufficient resources to support the virtual path**. The Final Office Action discusses a similar limitation (which was previously in claim 1).

The discussion on p. 3 of the Final Office Action proposes that “Phelps discloses determining if there is any capacity available at each computing node.” Even if this characterization of *Phelps* is correct (and Applicant does not concede this point), this feature falls short in several ways of being a disclosure of Applicant’s limitation that “said candidate node is configured to determine whether said candidate node has sufficient resources to support said virtual path.”¹ As one example, Applicant notes that a check for “any” capacity is not enough to meet Applicant’s determination that a candidate node has “sufficient” resources. At least for this additional reason, claim 3 is allowable under § 103(a).

As another example, independent claim 29 includes **a processor “configured to determine whether a candidate node comprising said network element has sufficient resources to support said virtual path.”** This limitation is not addressed by the Final Office Action. Applicant does not see this limitation as being disclosed in the cited portions of the references. At least for this reason, independent claim 29 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, independent claim 57 and all claims dependent therefrom are also allowable under § 103(a).

¹ This characterization of *Phelps* also does not equate to Applicant’s former limitation in claim 1 of “determining whether a candidate node has sufficient resources to support said virtual path, [wherein] said determining is performed by said candidate node.”)

New claims

New claims 120-124 depend variously on independent claims 1 and 57. Accordingly, new claims 120-124 are allowable at least for the reasons set forth above.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5093.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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